



**Department of
PUBLIC DEFENSE**



**Seattle
City Attorney's Office**

April 24, 2019

Dear Judge McKenna,

We write to express our concern regarding several recent apparent violations of the canons of judicial ethics. Our concerns are based on your repeated comments regarding the sentencing recommendations made by prosecutors, the role of defense counsel, and problems you perceive in the criminal legal system, as well as your conduct during the sentencing of Francisco Calderon. We request that you adhere to the canons in the future so that parties appearing before you can be assured of receiving a fair hearing before an unbiased judge. Additionally, we request that you step aside as presiding judge so that your conduct does not further tarnish the reputations of your fellow Seattle Municipal Court judges, to whom these criticisms are not directed.

Canon of Judicial Conduct 1 provides that a judge shall act “at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.” You have repeatedly made statements that undermine public confidence in the impartiality of the judiciary. On April 19, 2019, you spoke at the Downtown Seattle Association’s City Maker breakfast. There, you suggested that you felt bound to follow prosecutors’ recommendations 99 percent of the time. This suggests the very opposite of impartiality – and that you disregard the advocacy of defense counsel.

In addition, you have had numerous conversations with City Attorney Pete Holmes, Chief of the City Attorney’s Criminal Division Kelly Harris, and several line prosecutors in which you have criticized the City’s sentencing recommendations. During these conversations, which took place outside the presence of defense counsel, you have urged the City to request longer sentences so that you can impose a sentence between the City’s and defense’s recommendations. You have complained that you look like “the bad guy” when you exercise judicial discretion by imposing a sentence above the City’s recommendation. As a judge, you have the authority to impose any lawful sentence once a defendant is convicted and are not required to follow the City’s sentencing recommendations, but it is improper for you to attempt to control the City’s recommendation. This pattern and practice of suggesting otherwise erodes confidence in the judiciary generally and undercuts any belief in your impartiality.

Canon of Judicial Conduct 2.10 states that a “judge shall not make any ... nonpublic statement that would reasonably be expected to substantially interfere with a fair trial or hearing,” and a “judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.” It appears that you violated this canon with regard to the sentencing of Francisco Calderon.

On Jan. 10, 2019, you sentenced Mr. Calderon, who was charged with and convicted of misdemeanor assault. Notwithstanding your Probation Department’s advice and the City Attorney’s and defense attorneys’ joint recommendation that Mr. Calderon be ordered to

complete treatment with the balance of the sentence suspended (he had already served 50 days in jail), you sentenced him to 364 days in jail. This was an extraordinary sentence, the maximum allowed by the law, rarely imposed in Seattle Municipal Court. Enhancing the spectacle of this sentencing, you issued a “drag order,” requiring corrections officers to bring him to court against his will.

KOMO news reporter Matt Markovich and Jennifer Coats, a member of the group Speak Out Seattle, attended the sentencing. While we welcome the transparency that media and public scrutiny bring to court proceedings, we rarely see members of the press or the public watch these proceedings, and their presence in combination with your resort to a drag order raise the specter of a premeditated display.

In fact, evidence suggests that Ms. Coats and Mr. Markovich came at your invitation to witness your unusual sentencing philosophy at work. On Nov. 7, 2018, you spoke before the North Precinct Advisory Council regarding the need for longer jail sentences and the “pressures SMC judges” face from defense attorneys to keep the jail population low.¹ You invited attendees, including Ms. Coats, to visit your courtroom. It is exceedingly unlikely that Ms. Coats and Mr. Markovich coincidentally decided to watch court on the same day.

Your invitation to Ms. Coats and apparent invitation to Mr. Markovich suggests you decided the outcome in Mr. Calderon’s matter before sentencing – before the parties had an opportunity to present argument and before Mr. Calderon could address the court. These statements and your invitation constitute a non-public statement indicating you had decided the outcome of the sentencing prior to hearing argument. Your invitation essentially constituted a pledge to do something unusual in Mr. Calderon’s case.

It is imperative parties in Seattle Municipal Court appear before judges who appreciate the importance of judicial ethics. We request that you either comport yourself in a way that conforms with the Canons of Judicial Conduct or that you recuse yourself in all criminal matters. We also ask that you step aside as presiding judge. As long as you remain presiding judge and convene bench/bar meetings, neither the City Attorney’s Office nor the Department of Public Defense will attend.

The City Attorney and the Public Defender are adversaries in the courtroom and disagree on many matters of criminal justice policy; rarely do we stand together on issues. We do so today because of our shared concern that you are disregarding your duty to act with impartiality and integrity. Recent political turmoil about Seattle’s criminal legal system calls for strict adherence to the judicial tenet of impartiality, rather than self-aggrandizing disregard of it. Those appearing before you deserve nothing less.

Sincerely,



Anita Khandelwal
Director, Department of Public Defense



Pete Holmes
Seattle City Attorney

¹ <http://www.pinehurstseattle.org/wp/wp-content/uploads/2018/11/2018-11NPACMinutes.pdf>